



January 3, 2005

Ms. Tam Doduc
Deputy Secretary for Environmental Quality
California Environmental Protection Agency
P.O. Box 2815
Sacramento, California 95814

Advisory Board*

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*Physicians for Social Responsibility
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California Air Resources Board

Robina Suwol
California Safe Schools

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*California Communities
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* Affiliations Provided for
Identification Purposes Only

Re: Cal/EPA Environmental Justice Action Plan

Dear Ms. Doduc:

The California Environmental Rights Alliance supports the progress being made through the development and implementation of the Cal/EPA Environmental Justice Action Plan. We have identified and offer in this letter a few opportunities for improvement. In general, we remain optimistic that the Cal/EPA EJ Action Plan will help address environmental justice concerns in California. We do, however, urge Cal/EPA to acknowledge and anticipate that this process will require tough decisions, a commitment to change, and effective leadership. Cal/EPA must be prepared for this challenge.

Some of the actions required to deal properly with environmental justice problems in California will not be popular with those who pollute our air, land, and water. While seeking consensus is a worthwhile goal, Cal/EPA should not expect or insist upon a consensus among stakeholders as a prerequisite for moving forward. There will be issues and proposals that require the demonstration of courage and leadership. As President Woodrow Wilson once said, "Leadership does not always wear the harness of compromise."

The California Environmental Rights Alliance works to achieve environmental justice and improve community health in California. We serve the needs of California's communities of color, low-income residents, and other underrepresented populations who live, work, learn, and play in places with the worst pollution problems and fewest environmental assets. We welcome this opportunity to provide comments on Cal/EPA's EJ Action Plan.

1. Cal/EPA Should Clearly Identify Its Main Objective as the Reduction and Prevention of Pollution in California's Most Heavily Impacted Communities.

We have reviewed the October 2004 Cal/EPA EJ Action Plan and have participated in many of the associated workshops and meetings hosted by Cal/EPA and its board, departments, and office (BDOs). We have one

overriding concern: ***The main objective of this process must be the reduction and prevention of pollution in California's most heavily impacted communities.*** So far, Cal/EPA has not clearly or consistently focused on the ultimate goal. Too much emphasis has been placed on the "development of guidance" and conducting additional analyses.

This is particularly important when dealing with the pilot projects. The pilot projects must move beyond the pseudo goal of a sophisticated bean count of pollution sources. They must include tangible actions that truly reduce and prevent pollution. Similarly, when considering such things as "public participation," "precautionary approaches," and "cumulative impacts," Cal/EPA should not characterize the end goal as "guidance" or "proposals for policy, regulatory, and statutory changes." The end goal of these undertakings should be the adoption, implementation, and enforcement of guidelines, policies, regulations, and statutes.

We, therefore, recommend the revision of two key EJ Action Plan objectives. We ask that Cal/EPA change the objectives from "*Develop Guidance on Precautionary Approaches*" to "*Reduce and Prevent Pollution Through Precautionary Approaches*" and from "*Develop Guidance on Cumulative Impacts*" to "*Reduce and Prevent Pollution Using Cumulative Impacts Analyses.*" (EJ Action Plan, p. 4; emphasis added)

Cal/EPA must be careful not to fall into a trap that results in endless analyses and planning, and prohibits decision makers from actually doing something about environmental justice problems. The end point of the EJ Action Plan process must not be a laundry list of additional proposals. The end point must be measurable progress in reducing and preventing pollution. That is and will remain the ultimate performance measure and the criterion by which the success of Cal/EPA's efforts will be judged.

2. Cal/EPA Should Develop a Definition of "Precautionary Approaches" Based Upon the Work of the Science and Environmental Health Network

Much of the work on defining "precautionary approaches" has already been done, and done quite well by representatives of the Science and Environmental Health Network. We recommend that Cal/EPA rely upon their work when developing "a common, objective working definition for precautionary approaches." (EJ Action Plan, p. 4) In its most basic form, a precautionary approach relies upon the best available science to prompt anticipatory action to protect public health and the environment given a reasonable threat of harm and in the absence of scientific certainty. A more viable definition of a "precautionary approach" would go much further. Based on the work of Dr. Ted Schettler, Dr. Katherine Barrett, and Ms. Carolyn Raffensperger, a precautionary approach can be defined as (1) setting goals, (2) assessing alternatives (i.e., asking whether it is possible to avoid harm while achieving established goals), (3) adopting a transparent, inclusive, and open decision-making process, (4) analyzing assumptions and uncertainty, (5) adjusting the burden for evidence of safety and the responsibility for associated liabilities to be proportionate to the lack of scientific certainty and the potential for serious and

irreversible harm, and (6) learning and adapting (i.e., systematically revisiting decisions and making necessary adjustments).¹ We suggest that Cal/EPA review the work of Dr. Schettler and his colleagues for a more comprehensive understanding and explanation of this definition. Cal/EPA should also consider creating a database of clean and low-polluting alternatives to assist communities in evaluating proposals that may include polluting activities. This database should also include a list of possible mitigation measures available to communities and local decision makers.

3. Cal/EPA Should Adopt an Inclusive Definition of Cumulative Impacts

Cal/EPA should adopt an inclusive definition of cumulative impacts that incorporates all of the variables within each of the parameters identified by the Office of Environmental Health Hazard Assessment (OEHHA). In his presentation at the EJ Action Plan Workshop in Sacramento on November 8, 2004, Mr. John Faust of OEHHA identified the key parameters for developing a definition of multi-media cumulative environmental impacts. Those parameters include (1) who or what is impacted, (2) the cause of the impacts, (3) the type of impacts, and (4) the time frame of the impacts. Thus, under the “Who or What Is Impacted?” parameter, the definition of cumulative impacts would include people (including sensitive and vulnerable populations), communities, geographic areas, and the environment (air, land, and water). Under the “What Is Causing the Impacts?” parameter, the definition would include chemicals, agents, non-chemical stressors, emissions, discharges, projects, and individually minor but collectively significant actions. Under the “What Type of Impacts?” parameter, the definition would include health risks, direct and indirect effects, environmental burdens and hazards, ecological effects, and negative and positive effects. Under the “What Is the Time Frame?” parameter, it would include short-term and long-term impacts, and past, present, and reasonably foreseeable future impacts. This inclusive definition provides an analytical framework for approaching the complex question of cumulative environmental impacts. It will also ensure that the cumulative impact problems will be approached from a variety of angles and minimize the chances of developing an analytical framework that overlooks important issues.

4. Cal/EPA’s Cumulative Impacts Assessment and Pilot Project Processes Should Include the Analysis of Demographic Data and Health Indicators

The assessment of cumulative impacts and the implementation of the pilot projects needs to include the analysis of demographic data and health indicators. The demographic data analysis should, at minimum, include information about the ethnic and racial background of the area being considered, income, and language usage and familiarity. Ideally, the demographic data would include an assessment of trends over time. For example, Professor Manuel Pastor and his colleagues have discovered that areas of “ethnic churning” (i.e., where communities have

¹ Adapted from Schettler, T., K. Barrett, and C. Raffensperger, 2002, The Precautionary Principle. In *Life Support: The Environment and Human Health* (M. McCally, Ed.), Cambridge, MA: MIT Press.

transitioned from one primary ethnic make-up to another) have a higher likelihood of having companies that treat, store, or dispose of hazardous materials move into their neighborhoods. The health indicators analysis should include an assessment of the health status and needs of communities. Cal/EPA should pay particular attention to health issues known or likely to be linked to exposure to environmental contaminants (e.g., asthma, cancer, developmental disease, birth defects, preterm birth, low birth weight, cardiovascular disease, etc.). Health needs indicators should include access to health care services, medical insurance status, and health care knowledge and educational opportunities.

5. Cal/EPA Should Use a Two-Track Approach Toward the Analysis and Reduction of Cumulative Impacts

Cal/EPA should use a two-track approach when analyzing and reducing cumulative impacts. One track should include the use of existing data and a second track should include the identification and elimination of data gaps. For example, when considering air pollution, Cal/EPA should rely upon existing information about sources of toxic air contaminants. Cal/EPA should also identify toxic air contaminant data gaps (e.g., the lack of information about emissions and toxicity of known and suspected toxic air contaminants) and develop the means of eliminating those data gaps without delay.

6. Pilot Project Selection Criteria Should Include the Willingness and Capacity of Community Members to Participate, and the Responsiveness to Community Needs and Concerns

When selecting pilot project areas, we encourage Cal/EPA to consider the willingness and capacity of community groups and members to participate in the pilot projects. The pilot projects should have the full support of the selected communities, and the communities must be prepared, willing, and able to work with Cal/EPA to assure a successful outcome. In addition, Cal/EPA should initiate meetings with potential pilot project community representatives in order to identify and respond to community needs and concerns. It is important that Cal/EPA not assume that it knows what is best for these impacted communities.

7. The Highest Priority Pilot Project Performance Measure Must Be the Reduction and Prevention of Pollution

Cal/EPA should continually check back to assure that the pilot projects will, first and foremost, result in the reduction and prevention of pollution. This must be the most basic criterion for judging the success of the pilot projects. Other performance measures should include (1) the ability to replicate the success of the pilot projects in other communities and (2) the active participation of community members in the pilot project processes. In addition, the Phase 2 goal of the pilot projects should not be limited to collecting data and identifying "data gaps." (See EJ

Action Plan, p. 8) Cal/EPA should also identify gaps in regulations, statutes, administrative procedures, decision-making processes, and inter-agency coordination.

8. The Consideration of Cost-Effectiveness Must Be Comprehensive

Because of the long history of frustration and disappointment we have had with this matter, we remain concerned about Cal/EPA's continued insistence upon the consideration of "cost-effectiveness" and "feasibility" of proposed remedies to environmental justice problems. We ask that any such analysis be as comprehensive as possible. We ask Cal/EPA to often return to the questions of "Cost-effective to whom?" and "Feasible for whom?" Decisions that save polluting industries money by allowing them to externalize their costs increase the economic burdens of impacted community members. We understand why Cal/EPA feels obligated to consider cost-effectiveness but we remind you that your paramount responsibility is the protection of the environment. In all fairness, we don't see officials at the Business, Transportation, and Housing Agency's Commerce and Economic Development Program spending an equal amount of time and effort protecting the interests of impacted communities. We urge Cal/EPA to explain how it will consider the long-term in-direct public health, social, and other costs associated with polluting activities. We also urge Cal/EPA to acknowledge openly the limits of any economic impacts analysis it conducts as part of this EJ Action Plan process.

9. Scientific Peer Review Processes Must Not Be Used to Delay Action to Reduce and Prevent Pollution

We support the use of the best available scientific studies to make environmental decisions. The lack of scientific studies, however, should not result in Cal/EPA refusing to take action where there is reasonable evidence that public health or the environment have been, or will be negatively impacted by pollution. We agree with those business representatives who support the use of scientific peer review. We caution, however, that the scientific peer review process must not be used to delay decisions to fix environmental justice problems in California. In addition, any type of scientific peer review supported by Cal/EPA must be impartial and conducted in an open forum.

10. The Cal/EPA Advisory Committee on Environmental Justice Must Play a Central Role in the EJ Action Plan Process

It is a shame that the Cal/EPA Advisory Committee on Environmental Justice has not met for more than a year. The Advisory Committee is an important and necessary resource that Cal/EPA must rely upon if it has any hope of successfully implementing its EJ Action Plan and EJ Strategy. We request that, at minimum, Cal/EPA commit to convening the Advisory Committee once a quarter, no matter what the status of the environmental justice program at the time. Cal/EPA should convene the Advisory Committee and Inter-Agency Working Group as soon as possible to discuss the status of the Cal/EPA environmental justice program and to identify more

precisely the role of the Advisory Committee in the EJ Action Plan and EJ Strategy processes. Cal/EPA should seek the advice of the Advisory Committee about the selection and assessment of the pilot projects. Rather than minimizing the role of the Advisory Committee, Cal/EPA should expand the activities of the Advisory Committee to address the implementation of recommendations not covered in the EJ Action Plan (e.g., permitting and land use issues).

In conclusion, we would like to acknowledge that the Cal/EPA environmental justice program has been invigorated by the decision to share responsibilities for implementing the EJ Action Plan among all of the BDOs. This decision has resulted in the involvement of a much larger group of BDO representatives in Cal/EPA's EJ program. We have been impressed that the BDOs have taken the EJ Action Plan seriously and have devoted time, staff, and resources to this project.

Thank you for considering our comments.

Sincerely,

A handwritten signature in cursive script that reads "Joseph K. Lyou".

Joseph K. Lyou, Ph.D.
Executive Director

VIA ELECTRONIC MAIL

cc:

Members, Cal/EPA Advisory Committee on Environmental Justice
Members, Cal/EPA Environmental Justice Inter-Agency Working Group
Team Leaders, Cal/EPA EJ Action Plan
Ms. Celeste Cantú, Water Resources Control Board
Ms. Malinda Hall, Cal/EPA
Mr. Mark Leary, California Integrated Waste Management Board
Mr. Romel Pascual, U.S. EPA
Mr. Terry Tamminen, Office of the Governor
Ms. Catherine Witherspoon, California Air Resources Board